

II. Analysis

A. Section 61.113(a).

The FAA has determined that amending the relief granted under Exemption No. 6771, as amended, from § 61.113(e) to § 61.113(a) so the exemption to receive reimbursement for certain expenses will apply to more than search and location flights would not be in the public's interest. The petitioner states that the CAP, under approved Memorandums of Understanding (MOU) or Letters of Agreement (LOA) with the USAF, can receive payments approximating the actual operating costs of the aircraft from authorized agencies. These operations may consist of Federal Emergency Management Agency and American Red Cross disaster assistance missions, and FAA and State and local government support missions. While performing these missions, the CAP occasionally may be required to fly nonmember passengers and property from point to point where limited reimbursement is involved. The FAA, however, finds that receiving reimbursement for transportation, whether directly from a source outside the USAF or from an outside source through the USAF, constitutes "compensation," and the flight becomes a commercial operation. There are many certificated 14 CFR part 135 operators available to conduct these types of transportation operations. The CAP can conduct these types of operations at a much lower cost than part 135 operators, thereby giving the CAP an unfair advantage. Further, CAP mission pilots must meet certain experience requirements and complete a practical test given by CAP check pilots, the FAA does not oversee CAP operations to ensure an appropriate level of safety is maintained. In addition, the CAP requests that persons holding private pilot certificates be allowed to conduct these types of operations. A private pilot has not demonstrated to the FAA an appropriate level of skill and knowledge to conduct these types of operations. Consequently, the FAA is unable to determine that an equivalent level of safety would be maintained.

B. Section 119.1(a)(1).

The petitioner also requests an exemption from § 119.1(a)(1) so that part 119 does not apply to the CAP for air carriage or commercial operations limited to the reimbursement for the carriage of CAP members or employees, government employees or volunteers (to include Coast Guard Auxiliary), Public Safety Officers (as defined in § 3796(b) of Title 42, United States Code), or employees, members, or volunteers of the American Red Cross (including all chartered units) when performing USAF-assigned missions. As stated above, receiving reimbursement for transportation beyond what is allowed under § 61.113(e) from a source outside the USAF or from an outside source through the USAF is "compensation" and renders the flight a commercial operation. The FAA has determined that allowing a private pilot to engage in commercial operations would not be in the public's interest.

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The CAP also petitions for an exemption from § 119.1(a) for reimbursement for flight hours provided for CAP/AFROTC cadet orientation flights. In accordance with CAP Regulation 60-1, the following are the requirements to be a cadet orientation pilot:

1. Be an active CAP pilot at least 21 years of age (or 18 years of age with a valid FAA flight instructor certificate).
2. Have a minimum of 200 hours (500 hours for AFROTC orientation flights) total pilot-in-command (PIC) time in the category and class of airplane to be used. Glider pilots must have at least 50 hours or 100 flights as PIC of a glider or be a current certificated flight instructor with a glider rating.
3. Satisfactorily demonstrate a thorough knowledge of the Cadet Orientation Flight Syllabus (CAPF 77) to a CAP check pilot and have the CAPF 5 (CAP Pilot Checkout) flight check annotated as qualified to conduct cadet orientation flights.
4. Be designated in writing as a cadet orientation pilot in the applicable aircraft group(s) by the present Executive Director, or region or wing commander.

In addition, paragraph 3-2.e.(2) of CAP Regulation 60-1(E) provides that:

Overseas cadet units may use military aeroclub aircraft and pilots to administer cadet orientation rides in accordance with CAPF 77. Military aeroclub pilots will comply with paragraph 3-2.e.(2) of CAP Regulation 60-1(E) and be thoroughly familiar with CAPF 77.

The CAP check pilot who gives the practical tests to cadet orientation pilots (No. 3 above) must possess at least an FAA commercial pilot certificate with an instrument rating or airline transport pilot certificate, and a valid FAA flight instructor certificate. Therefore, the FAA has determined that an appropriate level of safety would be maintained if a CAP cadet orientation pilot gives orientation rides to cadets under CAP regulations.

In addition, cadet orientation flights are USAF-assigned missions, which comply with condition No. 1 of this exemption and originally provided under the initial issuance of this exemption. Condition No. 7 states that CAP members and government employees or personnel who are officially authorized by the CAP to aid in the performance of the approved flight activity are permitted aboard an aircraft operated under the exemption. Because the purpose of these flights is cadet orientation, the cadet is an essential part of that flight. Consequently, the FAA is exempting cadet orientation flights from § 119.1(a), and the FAA is amending condition No. 7 to specifically allow cadets to be aboard during cadet orientation flights.

C. Federally Appropriated Funds.

In its petition, the CAP seeks a determination that the receipt of federally appropriated funds by the CAP pursuant to its Cooperative Agreement with the USAF does not constitute "compensation or hire" or "commercial operation" for the purposes of part 61 or part 119. Also, the CAP requests a determination of whether the receipt of funds from a State or local government entity pursuant to an MOU or LOA conferring USAF-assigned mission status constitutes "compensation or hire" or "commercial operation" for the purposes of part 61 or part 119.

Effective October 1, 2000, the CAP began receiving federally appropriated funding pursuant to a Cooperative Agreement (Public Law 106-259). Section 8031 of Public Law 106-259 provides fiscal year 2001 CAP funding:

"Of the funds made available in this Act, not less than \$21,417,000 shall be available for the Civil Air Patrol Corporation, of which \$19,417,000 shall be available for Civil Air Patrol Corporation operation and maintenance * * *
Provided that funds identified for the 'Civil Air Patrol' under this section are intended for and shall be for the exclusive use of the Civil Air Patrol Corporation and not for USAF or any unit thereof."

This statement shows that the money appropriated by Congress is for exclusive use by the CAP. Although the USAF is distributing it, the money received under the Cooperative Agreement is not considered receipt of money from an outside source and not considered "compensation or hire." On the other hand, money received from an outside source (through an MOU or LOA), whether it is received directly from the outside source or through the USAF, would be considered "compensation." If this money is used to provide transportation, then the transportation may be considered a "commercial operation." Persons engaged in commercial operations, except those listed in § 119.1(e) or covered under an exemption, must hold an operator's certificate issued by the FAA.

III. Partial Grant of Exemption

In consideration of the foregoing, I find that a partial grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, Exemption No. 6771, as amended, is hereby further amended by (1) extending its May 31, 2002, termination date to May 31, 2004, unless sooner superseded or rescinded, (2) granting relief from § 119.1(a) to include CAP/AFROTC cadet orientation flights, and (3) continuing to provide relief from § 61.113(e), subject to the following conditions and limitations:

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1. This exemption applies only to a flight or series of flights directly related to USAF-assigned missions when the CAP is operating as an instrumentality of the United States. No corporate missions may be operated under this exemption.
2. CAP members who hold private pilot certificates and provide an aircraft for use in CAP missions listed in condition No. 1 may be reimbursed for aircraft operating expenses directly related to the mission at a fixed rate in accordance with CAP Regulation 173-3, as amended.
3. CAP members who hold private pilot certificates and operate a CAP-owned aircraft for use in CAP missions listed in condition No. 1 may be reimbursed for aircraft operating expenses directly related to the mission. These operating expenses are limited to fuel, oil, supplemental oxygen, fluids, lubricants, servicing, and maintenance of the aircraft.
4. CAP members who hold private pilot certificates may be reimbursed for nonaircraft operating expenses directly related to CAP missions listed in condition No. 1. These expenses are limited to preheating, deicing, and airport expenses.
5. CAP members who hold private pilot certificates may, if operational considerations require an overnight stay away from the pilot's home base and while on a CAP mission listed in condition No. 1, receive per diem expenses up to the rate listed in CAP Regulation 173-3, as amended.
6. The CAP will inform the Administrator of any changes to CAP regulations that may have an effect on this exemption at least 30 days before the change.
7. Only the following personnel are permitted to be aboard an aircraft operated under this exemption:
 - a. Pilot crewmembers who are officially authorized by the CAP,
 - b. CAP members,
 - c. Members of the U.S. armed services, and
 - d. Government employees or personnel who are officially authorized by the CAP to aid in the performance of the approved flight activity, including CAP or AFROTC cadets during cadet orientation flights.

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8. Cadet orientation flights will be conducted in accordance with CAPF 5; CAPF 77; CAP Manual 50-16, as amended; CAP Regulation 60-1, as amended; and all other applicable CAP regulations, manuals, forms, and policies.
9. Each CAP member operating under this exemption must meet the experience, training, and testing requirements in CAP Manual 50-16, as amended; CAP Regulation 60-1, as amended; and part 61.
10. The CAP must maintain a current record of each pilot operating under this exemption. The record must include at least the following:
 - a. Name of the pilot,
 - b. Facsimile of the person's pilot and medical certificates,
 - c. Make and model of each aircraft,
 - d. USAF mission number,
 - e. Itinerary and total time of each flight, and
 - f. A purchase receipt with an itemized listing of all reimbursable costs incurred while performing under the conditions and limitations of this exemption. The pilot logbook is not acceptable for this record.
11. The records required under condition No. 10 must be retained by the CAP for at least 1 year and must be presented to the Administrator upon request.

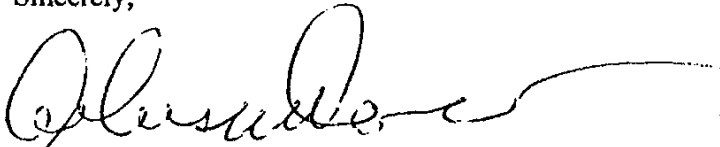
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12. The CAP must ensure its supervisory personnel, its member pilots, and any other personnel who participate or are aboard any aircraft operated under this exemption are familiar with the provisions contained in this exemption.

This letter shall be attached to, and is a part of, Exemption No. 6771, as amended.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis C. Cusimano", with a long horizontal flourish extending to the right.

Louis C. Cusimano
Acting Director, Flight Standards Service

CAP MISSIONS AND PILOT LIMITATIONS

IF THE PURPOSE OF THE FLIGHT IS	AND ON BOARD ARE	AND THE MISSION IS	AND THE AIRCRAFT IS	THEN MAY BE FLOWN BY	PILOT MAY BE REIMBURSED FOR	REFERENCE
Search and Locate	Pilot crewmembers, CAP members, Armed Services, Authorized Government Employees	A or B Reimbursed or Not Reimbursed	Corporate Owned	Private Pilot	Fuel, Oil, Supplemental Oxygen, Fluids, Lubricants, Servicing, Maintenance, Per Diem	Exemption 6771B
	Other Passengers	C Reimbursed or Not Reimbursed	Member Furnished See Aerial Work Operations	Private Pilot	In accordance with CAPR 173-3	Exemption 6771B
		A	Any	Private Pilot	Fuel, oil, airport expenditures, or rental fees	FAR 61.113(e)
		B or C Reimbursed Not Reimbursed	Any	Commercial Pilot or ATP	Any Expenses Authorized by CAP	FAR 119.1(e)(4)
			Any	Private Pilot	Pilot may not pay less than the pro rata share of the operating expenses, provided the expenses involve only fuel, oil, airport expenditures, or rental fees OR pilot may not log flight time	FAR 61.113(a); FAR 61.113(c); FAR 119.1(e)(4); FAA Interpretation 1997-23
Aerial Work Operations (Aerial imaging, radio relay)	Crewmembers (FAR 1.1)	Any	Any	Private Pilot	Pilot may not pay less than the pro rata share of the operating expenses, provided the expenses involve only fuel, oil, airport expenditures, or rental fees OR pilot may not log flight time	FAR 61.113(a); FAR 61.113(c); FAR 119.1(e)(4); FAA Interpretation 1997-23
	Passengers or Non-CAP Property	Reimbursed	Any	Commercial Pilot or ATP	Any Expenses Authorized by CAP	FAR 119.1(e)(4)
		Not Reimbursed	Any	Private Pilot	Pilot may not pay less than the pro rata share of the operating expenses, provided the expenses involve only fuel, oil, airport expenditures, or rental fees OR pilot may not log flight time	FAR 61.113(a); FAR 61.113(c); FAR 119.1(e)(4); FAA Interpretation 1997-23
Domestic CAP or AFROTC Orientation Flights	Pilot crewmembers, CAP Cadets, AFROTC Cadets	A or B Reimbursed or Not Reimbursed	Corporate Owned	Private Pilot	Fuel, Oil, Supplemental Oxygen, Fluids, Lubricants, Servicing, Maintenance, Per Diem	Exemption 6771B
Overseas CAP Orientation Flights	Pilot crewmembers, CAP Cadets	Any	Member Furnished AF Aero Club Owned	Private Pilot	In accordance with CAPR 173-3	Exemption 6771B
			Any	Commercial Pilot with Instrument Rating or ATP	Any Expenses Authorized by CAP	Exemption 6771B; CAPR 60-1 Para 3-216
Transportation	Passengers or Non-CAP Property	A or Not Reimbursed	Any	Private Pilot	Pilot may not pay less than the pro rata share of the operating expenses, provided the expenses involve only fuel, oil, airport expenditures, or rental fees OR pilot may not log flight time	Exemption 6771B; FAR 61.113(c)
		B or C Reimbursed	Any	Commercial Pilot	Any Expenses Authorized by CAP	Exemption 6771B
				Not Authorized - Part 135	N/A	FAR 119.1

Ver. 1.1
4/22/02

Part 1 DEFINITIONS AND ABBREVIATIONS

Sec. 1.1

General definitions.

As used in Subchapters A through K of this chapter, unless the context requires otherwise:

Crewmember means a person assigned to perform duty in an aircraft during flight time.

Part 61 CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

Subpart E--Private Pilots

Sec. 61.113

Private pilot privileges and limitations: Pilot in command.

(a) Except as provided in paragraphs (b) through (g) of this section, no person who holds a private pilot certificate may act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person, for compensation or hire, act as pilot in command of an aircraft.

(b) A private pilot may, for compensation or hire, act as pilot in command of an aircraft in connection with any business or employment if:

(1) The flight is only incidental to that business or employment; and

(2) The aircraft does not carry passengers or property for compensation or hire.

(c) A private pilot may not pay less than the pro rata share of the operating expenses of a flight with passengers, provided the expenses involve only fuel, oil, airport expenditures, or rental fees.

(d) [Not relevant]

(e) A private pilot may be reimbursed for aircraft operating expenses that are directly related to search and location operations, provided the expenses involve only fuel, oil, airport expenditures, or rental fees, and the operation is sanctioned and under the direction and control of:

(1) A local, State, or Federal agency; or

(2) An organization that conducts search and location operations.

(g) [Not relevant]

Part 119 CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS	
Subpart A--General	

Sec. 119.1

Applicability.

- (a) This part applies to each person operating or intending to operate civil aircraft -
 - (1) As an air carrier or commercial operator, or both, in air commerce; or
 - (2) [Not relevant]
- (b) This part prescribes -
 - (1) The types of air operator certificates issued by the Federal Aviation Administration, including air carrier certificates and operating certificates;
 - (2) (3) (4) (5) (6) [Not relevant]
- (c) (d) [Not relevant]
- (e) Except for operations when common carriage is not involved conducted with airplanes having a passenger-seat configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to -
 - (1) Student instruction;
 - (2) [Not relevant]
 - (3) Ferry or training flights;
 - (4) Aerial work operations, including -
 - (i) Crop dusting, seeding, spraying, and bird chasing;
 - (ii) Banner towing;
 - (iii) Aerial photography or survey;
 - (iv) Fire fighting;
 - (v) Helicopter operations in construction or repair work (but it does apply to transportation to and from the site of operations); and
 - (vi) Powerline or pipeline patrol;
 - (5) (6) (7) (8) (9) (10) [Not relevant]

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FEDERAL AVIATION DECISIONS

Interpretation 1997-23

FAD Digest of Interpretations:

FAR 61.23

For purposes of necessary medical certification under 61.23, a pilot exercising commercial pilot privileges and receiving compensation at an airshow or other aviation event must hold at least a commercial pilot certificate and a second-class medical certificate, while a pilot who is not receiving compensation must hold at least a private pilot certificate and a third-class medical certificate.

FAR 61.113

"Compensation," for purposes of FAR § 61.113, stating that a private pilot certificate does not permit a pilot to act as pilot in command of an aircraft that is carrying passengers or property for compensation, may be as broad as accumulated flight time while ferrying aircraft from a base to an airshow or aviation event, or may be lodging, transportation, or meals supplied to volunteers who ferry aircraft to such shows or events.

Source of interpretation: Letter to John W. Harrington, from Donald Byrne, Assistant Chief Counsel, dated October 23, 1997.

Thank you for your letter dated July 16, 1997, to the Office of the Chief Counsel, Federal Aviation Administration (FAA), on behalf of the Confederate Air Force (CAF), requesting an interpretation of what is considered compensation under section 61.113 of the Federal Aviation Regulations (14 CFR 61.113, formerly 14 CFR 61.118). You also request an opinion regarding the necessary medical certification for pilots conducting operations for the CAF at airshows and other aviation events.

In your letter you state the following: the CAF owns, maintains, and operates a number of aircraft throughout the Country and members of the CAF volunteer to fly these aircraft, without compensation, to various CAF and other aviation events. The CAF aircraft flown to these aviation events are used as static displays or used to perform fly-by activities before those in attendance at the event. During the course of the airshow or aviation event, these CAF pilot volunteers may receive lodging, use of cars for local transportation, meals, or other minor amenities (e.g. hats, T-shirts, programs, etc.); nothing more than other CAF volunteers who are not flying CAF aircraft. You ask whether the above is considered compensation under section 61.113, and whether the above flying activities are permissible if the CAF volunteer holds either a private pilot certificate and a third-class medical certificate or a commercial pilot certificate, or airline transport pilot certificate, and a third-class medical certificate. The answers to these questions are discussed below.

Section 61.113 sets forth the privileges and limitations of the holder of a private pilot certificate. That section states, in pertinent part, that a person who holds a private pilot certificate may not act as pilot in command of an aircraft that is carrying passengers or property for compensation or hire; nor may that person,

INTERPRETATIONS 1997-23

for compensation or hire, act as pilot in command of an aircraft. Section 61.113 does provide for exceptions to the above (incidental business activity, expense sharing, charitable airlifts, search and location missions, glider towing); however, none of the exceptions are applicable based on the facts presented in your letter.

Section 61.133 (14 CFR 61.133) sets forth the privileges and limitations of the holder of a commercial pilot certificate. That section states, in pertinent part, that a person who holds a commercial pilot certificate and who is qualified in accordance with this part and with the applicable parts of this chapter that apply to the operation, may act as pilot in command of an aircraft carrying persons or property for compensation or hire; and that person may, for compensation or hire, act as pilot in command of an aircraft.

Section 61.23 (14 CFR 61.23) sets forth the medical certificate requirements (first-class, second-class, third-class, or no medical certificate) when conducting various pilot operations. That section states, in pertinent part, that a person must hold at least a second-class medical certificate when exercising the privileges of a commercial pilot certificate and at least a third-class medical certificate when exercising the privileges of a private pilot certificate.

In order for a person to act as pilot in command of an aircraft for compensation or hire, a pilot must have at least a commercial pilot certificate and a second-class medical certificate. If no compensation or hire is involved, then a person may act as pilot in command of an aircraft with a private pilot certificate and a third-class medical certificate.

In determining what is considered compensation, it has been the FAA's longstanding policy to define compensation in very broad terms. For example, any reimbursement of expenses (fuel, oil, transportation, lodging, meals, etc.), if conditioned upon the pilot operating the aircraft, would constitute compensation. In addition, the building up of flight time may be compensatory in nature if the pilot does not have to pay the costs of operating the aircraft. While it could be argued that the accumulation of flight time is not always of value to the pilot involved, the FAA does not consider it appropriate to enter into a case-by-case analysis to determine whether the logging of time is of value to a particular pilot, or what the pilot's motives or intentions are on each flight.

Based on the facts provided in your letter, there are several areas where the CAF volunteers may be receiving compensation. First, you state that the CAF owns, maintains, and operates a number of aircraft throughout the country and that members of CAF fly these aircraft to various CAF and other aviation events. You state that these pilots receive no compensation, however, you do not state whether these pilots pay the operating cost to ferry the aircraft from where they are based to the various CAF and other aviation events. If these pilots are not paying the costs of operating the aircraft while ferrying the aircraft then the building up of flight time would be considered compensation. To avoid compensation, these pilots could either not log the flight time or they could log the flight time while bearing the full cost, including fuel and oil, for ferrying the aircraft.

Second, you state that during the course of the airshow or aviation event, CAF

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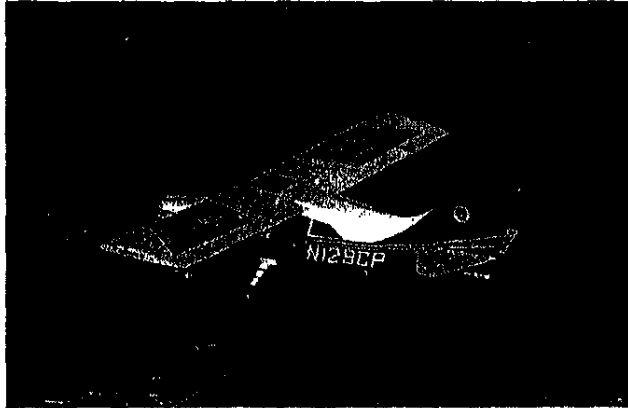
FEDERAL AVIATION DECISIONS

volunteers may receive lodging, use of cars for local transportation, meals, or other minor amenities. The determining factor in whether these items would be considered compensation is whether they are conditioned upon the CAF volunteer ferrying the CAF aircraft to the airshow or aviation event, or operating the CAF aircraft at the airshow or aviation event. In other words if the CAF volunteers did not ferry CAF aircraft to the event, or operate the CAF aircraft at the event, would the CAF still provide these volunteers with lodging, transportation, meals, etc. If the CAF would provide the above amenities to these CAF volunteers even if they did not ferry or operate the CAF aircraft, then the amenities would not be considered compensation. If, however, the above amenities are conditioned upon the CAF volunteers ferrying or operating the CAF aircraft at the airshow or aviation event then the amenities would be considered compensation.

With respect to the necessary medical certification for pilots operating the CAF aircraft at airshows and other aviation events, the determining factor is what privileges the pilot will be exercising. If the pilot is exercising commercial pilot privileges (e.g. receiving compensation), then the pilot must hold at least a commercial pilot certificate and a second-class medical certificate. If the pilot is exercising private pilot privileges (e.g. not receiving compensation), then the pilot must hold at least a private pilot certificate and a third-class medical certificate. As stated earlier, section 61.23 explains the necessary medical certification requirements for various pilot operations.

I trust that the foregoing satisfactorily responds to your questions. This opinion has been coordinated with Flight Standards.

MAULE ★



Homeland Security

CAP Experience With Maule

- ◆ 17 Maule aircraft currently operated by the Civil Air Patrol
- ◆ 2 MXT-7-180
Primary Mission: SAR
- ◆ 15 MT-7-235
Primary Mission: Glider Towing
Aircraft are Fully SAR Capable

CAP MT-7-235

Full SAR Ready

- ◆ **Observation Windows: All Four Seats**
- ◆ **Super Sky Light**
- ◆ **VHF Antenna with UHF Connector for Single-Frame Video**
- ◆ **NAT FM Radio**
- ◆ **Becker DF**

Proposed Homeland Security Aircraft MT-9-235 M.R.A.

- ◆ **Gross Weight Increase to 2800 lbs**
- ◆ **Divided Rear Bench Seat**
- ◆ **Vertical Camera Hole in Floor**
- ◆ **Left Side Rear Camera Window**

Gross Weight Increase MT-9-235 M.R.A.

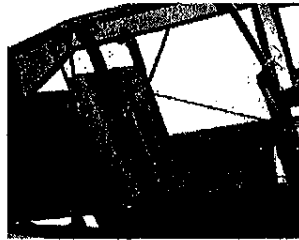
- ◆ Increase from 2500 lbs to 2800 lbs
- ◆ Wing Testing Completed
- ◆ Next Phase: Landing Gear Structure
- ◆ Estimated CAP Useful Load: 1070 lbs

Added Surveillance Capabilities for Homeland Security



Divided Rear Bench Seat

- ◆ Divided Into Two Halves

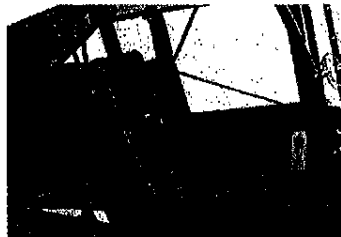


- ◆ One Half Can Be Removed



Divided Rear Bench Seat

- ◆ Half Seat Can Be Repositioned as Mission Requires

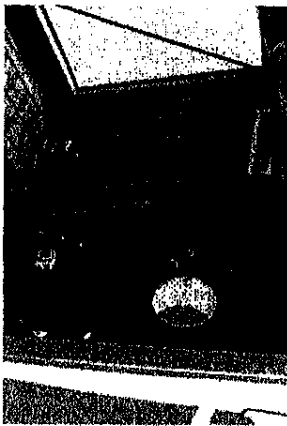


Divided Rear Bench Seat

- ◆ Half Seat Allows the Observer to Sit Sideways
- ◆ Improved Comfort and Stability for Target Tracking

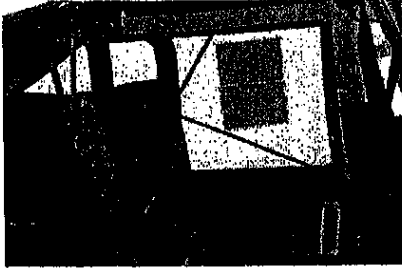


Vertical Camera Hole



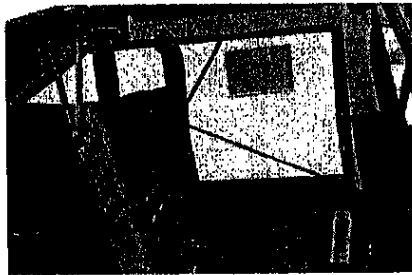
- ◆ Easy Access for Observer
- ◆ Optional Left or Right Side Installation

Left Side Rear Camera Window



◆ Hinged Window
Opens Downward

◆ Window Closed
(7.5" x 11" Shown)



Maule MT-9-235 Multi-Role Aircraft for CAP

◆ Versatile

◆ Reliable

◆ Economical

◆ Responsive Design Team

